

**Meeting of the Central Valley Flood Protection Board  
December 2, 2011**

**Staff Report – Joint Federal Project Amendment No. 3 to the Project Cooperation Agreement**

**United States Army Corps of Engineers  
American River Watershed, Folsom Dam Modifications - Joint Federal Project,  
Folsom, California**

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**BOARD ACTION**

Consider approval of Resolution No. 11-30 to:

1. Approve Amendment No. 3 (Attachment A) to the Project Cooperation Agreement (PCA) authorizing the acceleration of funds to the U.S. Army Corps of Engineers (USACE) in an amount not to exceed the current estimate of the non-federal sponsors' required cash contribution for the Joint Federal Project (JFP), less any funds previously contributed, for the immediate use by the USACE.
2. Delegate to the Board President the authority to execute the amendment in substantially the form attached hereto.

**SPONSORS**

The American River Watershed, Folsom Dam Modifications-JFP is a cooperative effort between the U.S. Department of Interior, Bureau of Reclamation (Reclamation), the U.S. Army Corps of Engineers (USACE), the Central Valley Flood Protection Board (CVFPB), and the Sacramento Area Flood Control Agency (SAFCA).

**LOCATION AND BACKGROUND**

Folsom Dam is located on the American River near the City of Folsom about 29 miles upstream of the City of Sacramento (Attachment B). Folsom Dam was constructed by the USACE and ownership was transferred to Reclamation in 1956. The multipurpose Folsom Dam stores 977,000 acre-feet of water to manage flood risk; provide water for municipal, industrial and agricultural use; generate electricity; and offer recreation to two million visitors annually.

Limitations of the existing flood control system and the urgent need to address flood risk and dam safety issues at the Folsom facility led to a partnership between Reclamation and the USACE in 2005, integrating the planning, design and implementation of

enhanced flood risk management measures with dam safety risk reduction under the single JFP.

By working together, the USACE, Reclamation, CVFPB and SAFCA will not only be able to address the dam safety risks associated with the probable maximum flood (PMF), but also, in combination with downstream levee upgrades, substantially reduce the risk of catastrophic flooding throughout the Sacramento region. This is due to the greater flexibility in timing releases through the six submerged tainter gates that will be installed at elevation 368 ft in the new spillway control structure (see Attachment B2).

While improvements will be made to many elements of the facility, the centerpiece of the project is the construction of a new auxiliary spillway. The auxiliary spillway will include: (1) a 1,100-foot-long approach channel; (2) a control structure containing six submerged tainter gates; (3) a 3,000-foot-long concrete-lined spillway chute; and (4) a stilling basin that will reduce flow velocities as the flow enters the American River.

To complete the project, the JFP has been divided into phases. Reclamation completed significant excavation of the auxiliary spillway site during the project's first two phases and will operate and maintain the facility upon completion. The USACE is responsible for the construction of the remaining phases, which include the control structure, approach channel, spillway chute and stilling basin. The USACE is also working on the spillway's Operation & Maintenance Manual, which will guide how the spillway will be managed upon completion. The results of this partnership are a combined project that meets both flood damage reduction and dam safety objectives at a substantial cost and schedule savings.

## **DESCRIPTION**

The JFP is funded through a partnership with the federal government (USACE) and non-federal partners, the State (CVFPB) and the local sponsor (SAFCA). The respective parties entered into a PCA for construction of the authorized features on March 30, 2004. The PCA was later amended in 2009 to construct the authorized auxiliary spillway. The USACE total project cost is estimated at \$833,000,000, in which costs are shared on a 65%/35% basis between the federal and non-federal sponsors. The non-federal portion is further cost-shared at 70%/30% between the State and local sponsor. The federal, State, and SAFCA shares of the estimated total project costs are \$541,450,000, \$204,085,000, and \$87,465,000, respectively.

It is estimated in fiscal year 2012 (FY12) that the USACE may have insufficient funds to cover their share of the required funds for the JFP. For the JFP, the estimated Federal funding required for FY12 is \$23,889,000 and the House Budget is \$19,028,000.

Therefore, to cover this deficit, we are requesting approval of Amendment No. 3 (Attachment A) to the PCA authorizing the acceleration of funds to the USACE in an amount not to exceed the current estimate of the non-federal sponsors' required cash contribution for the JFP, less any funds previously contributed, for the immediate use by the USACE. Having the option to accelerate funds to the USACE will ensure that the JFP construction proceeds without any delays.

If Amendment No. 3 is not approved, the funding for the JFP may be jeopardized. If there is inadequate funding, the design and construction activities for the JFP will be delayed or halted. This can leave the American River floodplain vulnerable to extensive damage and increase the potential for loss of life during floods. In addition, due to the increased probability of extension of the construction period, it is estimated the project partners will be subjected to a substantial cost increase.

### **STAFF RECOMMENDATION**

Staff recommends that the Board approve Resolution No. 11-30 (Attachment C) and:

- Approve Amendment No. 3 (Attachment A) to the PCA authorizing the acceleration of funds to the USACE in an amount not to exceed the current estimate of the non-federal sponsors' required cash contribution for the JFP, less any funds previously contributed, for the immediate use by the USACE and;
- Delegate to the Board President the authority to execute the amendment in substantially the form attached hereto.

### **LIST OF ATTACHMENTS**

- A. Amendment No. 3 to the PCA
- B1. Project Location Map
- B2. Auxiliary Spillway
- C. Resolution No. 11-30

AMENDMENT NUMBER 3  
TO THE  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE STATE OF CALIFORNIA  
AND  
SACRAMENTO AREA FLOOD CONTROL AGENCY  
FOR CONSTRUCTION OF THE  
AMERICAN RIVER WATERSHED, CALIFORNIA  
(FOLSOM DAM MODIFICATIONS)

THIS AMENDMENT Number 3 is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, Sacramento District and the State of California (hereinafter the "State"), represented by the President of the Central Valley Flood Protection Board, and the Sacramento Area Flood Control Agency (hereinafter "SAFCA"), represented by its Executive Director (the State and SAFCA when referred to collectively are referred hereinafter as the "Non-Federal Sponsors").

WITNESSTH, THAT:

WHEREAS, construction of the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California was authorized by Section 101(a)(6) of the Water Resources Development Act of 1999, Public Law 106-53 as modified by Section 128(a) of the Energy and Water Development Appropriations Act, 2006, Public Law 109-103 and Section 3029 of the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Government, the State and SAFCA entered into a Project Cooperation Agreement (hereinafter the "Agreement") for construction of the authorized features on March 30, 2004;

WHEREAS, the Government and the Non-Federal Sponsors entered into Amendment Number 1 to the Agreement on August 24, 2009 to construct the authorized auxiliary spillway;

WHEREAS, the Government and the Non-Federal Sponsors entered into Amendment Number 2 to the Agreement on June 21, 2010 to afford credit for the Federal share of costs incurred by SAFCA in connection with the Natomas levee features;

WHEREAS, the Non-Federal Sponsors propose to accelerate their provision of funds to the Government in an amount not to exceed the current estimate of the Non-Federal Sponsors' required cash contribution for the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California, less any funds previously contributed, for the immediate use by the Government for construction of the American River Watershed, California (Folsom Dam Modifications) at Folsom Dam, California; and

WHEREAS, the parties agree that such acceptance shall not represent or give rise to an obligation of the United States, including any obligation to provide reimbursement of the funds the Non-Federal Sponsors elect to provide or any obligation to request future funds to match the amount the Non-Federal Sponsors elect to provide, and that such funds will be credited against the Non-Federal Sponsors' future cost share when additional Federal funds are appropriated.

NOW, THEREFORE, the Government and the Non-Federal Sponsors agree to further amend the Agreement as follows:

1. ARTICLE II – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS is amended by inserting the following additional paragraphs at the end thereof:

“N. The State may offer in writing to accelerate provision to the Government of all or a portion of their contribution of funds required by paragraph D. of this Article for immediate use by the Government for construction of the Project. Upon receipt of any such offer from the State, the Government shall seek the approval and acknowledgement required to accept and use the accelerated funds. Upon receipt of such approval and acknowledgement, the Government shall notify the State in writing of receipt of such approval and acknowledgement. Upon receipt of such accelerated funds, the Government shall use such funds for construction of the Project. However, in no event shall the amount of funds accepted and used by the Government pursuant to this paragraph exceed the estimate of the State's contribution of funds required by paragraph D. of this Article minus any funds previously contributed by the State as of the date the Government accepts the offered funds.

O. As Federal appropriations are made available to pay the Federal share of the construction of the Project the Government shall afford credit for the funds provided in accordance with paragraph N. of this Article toward the State's contribution of funds required by paragraph D. of this Article.”

2. ARTICLE VI – METHOD OF PAYMENT is amended as follows:

a. Paragraph A. is amended by inserting “of the credit afforded pursuant to Article II.O. of this Agreement,” after “of the State's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement,” and before “of the non-Federal proportionate share of the total project costs actually incurred to date.”

b. Paragraph B.2.a. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O. of this Agreement,” after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

c. Paragraph B.2.b. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O. of this Agreement,” after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

d. Paragraph B.2.c. is amended by inserting “and after consideration of the credit amount the Government affords pursuant to Article II.O of this Agreement, “ after “after consideration of the credit amount the Government affords pursuant to Article II.M. of this Agreement,” and before “to meet.”

e. Paragraph B.3., first sentence, is amended by deleting “and” before “(c)” and by inserting the following at the end of the sentence: “; and (d) to the extent funds are offered and accepted in accordance with Article II.N. of this Agreement, any other financial obligation for construction in excess of the non-Federal proportionate share as they are incurred during the period of construction.”. f. Paragraph B.3., second sentence, is amended by inserting “, after consideration of the credit the Government affords pursuant to Article II.O. of this Agreement,” after “the Government determines” and before “that additional funds will be needed” in the second sentence.

g. Paragraph D.2. is amended by adding the following at the end thereof: “However, if the final accounting is conducted prior to the end of the period of construction due to termination of the Agreement pursuant to Article XIV of this Agreement, and the State accelerated provision of its required contribution of funds in accordance with Article II.N. of this Agreement, the Government shall refund to the State only that portion of any such accelerated funds that were not obligated by the Government for work on the Project, subject to the availability of funds.”

3. All other terms and conditions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 3 to the Agreement, which shall become effective upon the date it is signed by the authorized representative of the Government.

DEPARTMENT OF THE ARMY

STATE OF CALIFORNIA

BY: \_\_\_\_\_  
William J. Leady, P.E.  
Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_  
Benjamin F. Carter  
President  
Central Valley Flood Protection  
Board

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

SACRAMENTO AREA  
FLOOD CONTROL AGENCY

BY: \_\_\_\_\_  
Richard Johnson  
Executive Director

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Jeremy Goldberg, do hereby certify that I am the principal legal officer of the Central Valley Flood Protection Board ("Board") for this project, acting on behalf of the State of California, that the Board is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 3 to the Agreement Between The Department of The Army, The State of California and the Sacramento Area Flood Control Agency, in connection with the American River Watershed, California (Folsom Dam Modifications), and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of California, as represented by the Central Valley Flood Protection Board, have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Jeremy Goldberg  
Legal Counsel  
Central Valley Flood Protection Board

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

BY: \_\_\_\_\_

Benjamin F. Carter, President

Central Valley Flood Protection Board

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, M. Holly Gilchrist, do hereby certify that I am the principal legal officer of the Sacramento Area Flood Control Agency, that the Sacramento Area Flood Control Agency is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 3 to the Agreement Between The Department of The Army, The State of California and the Sacramento Area Flood Control Agency in connection with the American River Watershed, California (Folsom Dam Modifications) and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Sacramento Area Flood Control Agency have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification on this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
M. Holly Gilchrist  
Counsel for the  
Sacramento Area Flood Control Agency

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

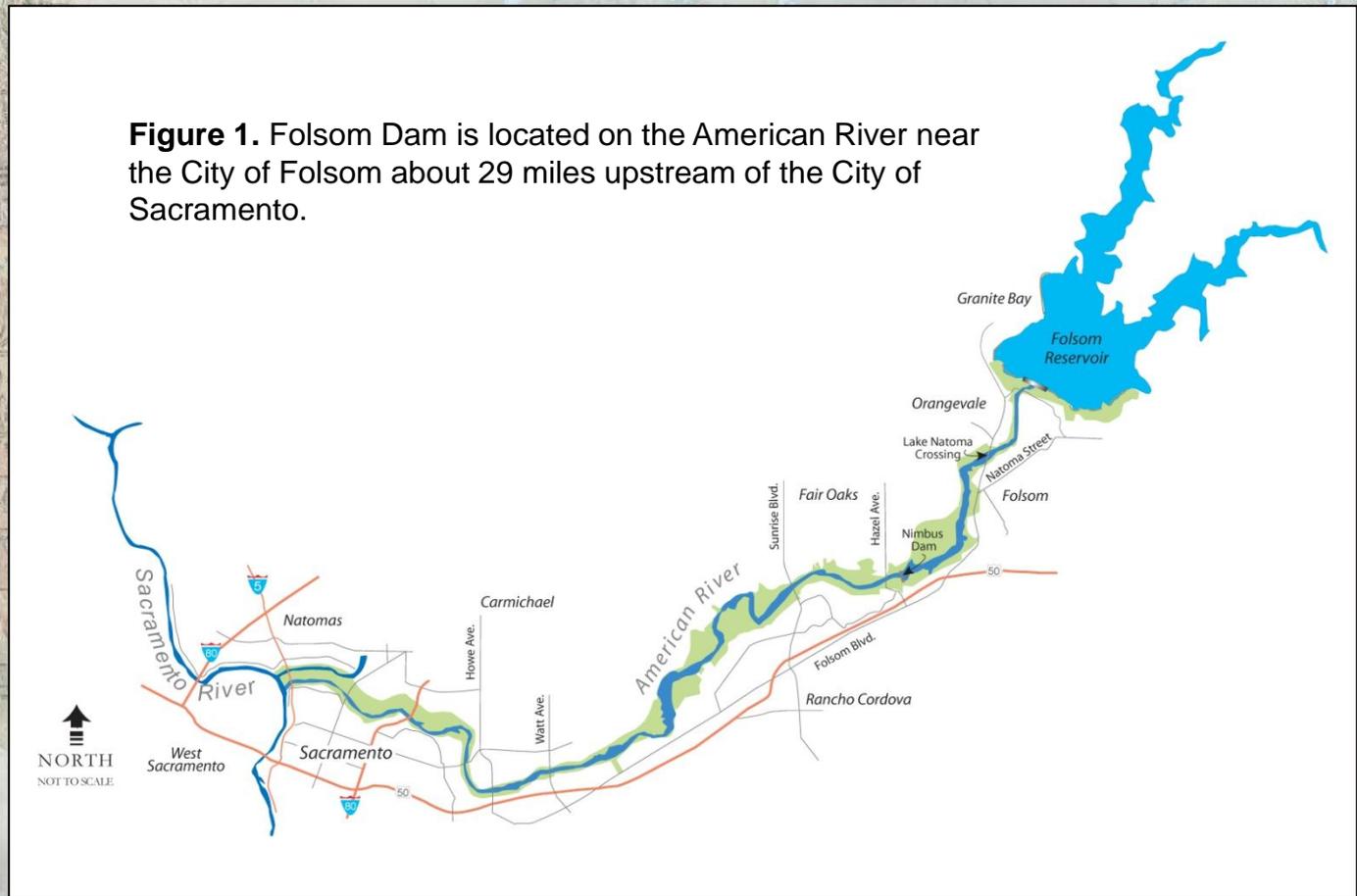
BY: \_\_\_\_\_

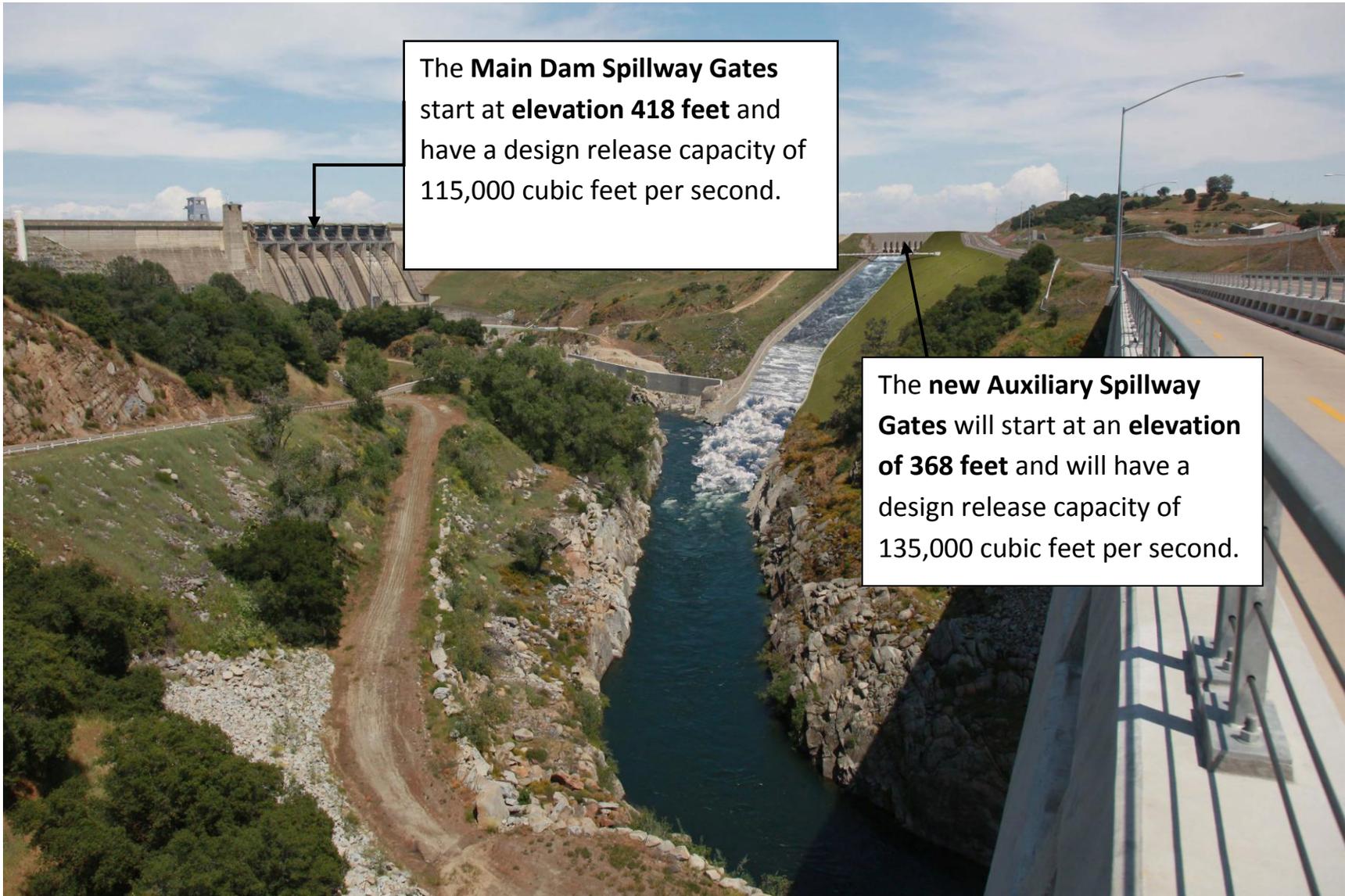
Richard Johnson

Sacramento Area Flood Control Agency

DATE: \_\_\_\_\_

**Figure 1.** Folsom Dam is located on the American River near the City of Folsom about 29 miles upstream of the City of Sacramento.





The **Main Dam Spillway Gates** start at **elevation 418 feet** and have a design release capacity of 115,000 cubic feet per second.

The **new Auxiliary Spillway Gates** will start at an **elevation of 368 feet** and will have a design release capacity of 135,000 cubic feet per second.

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOLUTION NUMBER: 11-30

FOLSOM DAM JOINT FEDERAL PROJECT  
APPROVAL OF AMENDMENT NO. 3 TO THE  
PROJECT COOPERATION AGREEMENT

WHEREAS, on March 30, 2004, The Reclamation Board, predecessor of the Central Valley Flood Protection Board (Board), the Department of the Army (hereinafter the "Government" or "USACE"), represented by the Assistant Secretary of the Army (Secretary), and the Sacramento Area Flood Control Agency (SAFCA) executed a Project Cooperation Agreement (PCA) for the construction of the American River Watershed, California, Folsom Dam Modifications Project (Project); and

WHEREAS, Congress authorized the Project in the Water Resources Development Act (WRDA) of 1999, Section 101(a)(6); Water Resources Development Act of 2007, Section 3029(b)(1); and

WHEREAS, the State of California authorized the Project in 1997 under California Water Code Sections 12670.11, 12670.14 and 12670.16; and

WHEREAS, on August 24, 2009, SAFCA, the USACE, and the Board amended the PCA (Amendment Number 1) to modify the Project and authorize construction of an

auxiliary spillway at Folsom Dam known as the Folsom Dam Joint Federal Project; and

WHEREAS, on June 21, 2010, SAFCA, the USACE, and the Board amended the PCA (Amendment Number 2) to afford credit for the Federal share of costs incurred by SAFCA in connection with the Natomas levee features; and

WHEREAS, it is estimated that in fiscal year 2012, the USACE may have insufficient funds available to cover their share of the required funds for the Project; and

WHEREAS, the Non-Federal Sponsors propose to amend the PCA to give the Board the option of accelerating their provision of funds to the USACE in an amount not to exceed the current estimate of the Board's required cash contribution for the Project at Folsom Dam, California, less any funds previously contributed, for the immediate use by the USACE for construction of the Project; and

WHEREAS, Amendment Number 3 makes no other changes to the financial obligations of SAFCA, the USACE or the Board.

NOW, THEREFORE, LET IT BE RESOLVED that the Central Valley Flood Protection Board:

1. Approves Amendment No. 3 to the Project Cooperation Agreement in substantially the form attached hereto.

2. Delegates to the Board President the authority to execute the Amendment

No. 3 in substantially the form attached hereto.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Benjamin F. Carter  
President  
Central Valley Flood Protection Board

By: \_\_\_\_\_

Date: \_\_\_\_\_

Francis "Butch" Hodgkins  
Secretary

Approved as to Legal Form and Sufficiency

By: \_\_\_\_\_

Date: \_\_\_\_\_

Jeremy D. Goldberg  
Legal Counsel  
State of California, Department of Water Resources